

Dr.S.N.Krishnamoorthy BGL PGDMLE PGDHA

Professor of Anaesthesiology

Velammal Medical College Hospital & Research Institute

MADURAI.

MEDICO-LEGAL SCENARIO IN INDIA TODAY:

Much water has flown under the bridge of consumer law; legislated as a potent weapon against the exploitative tactics of mammoth monopolies and corporate giants, it has admirably fulfilled its mandate of assisting the hapless customer to get quick justice at affordable cost against purveyors of defective goods and services. It has instilled a modicum of rectitude and restraint among outlets of goods and services. The insertion of medical services into the purview of consumer law was a somewhat late phenomenon. Between 1986 the year of its genesis and 1995 when medical affairs were made justiciable under consumer law, there was confusion and divergence of opinion among the various judicial forums about the applicability of consumer law to medicine. The position was settled by a judgment of the Honourable Supreme Court in the famous case of IMA v. V.P.Shantha in which case the apex court gave an enlightening dissection of the consumer law vis a vis the practitioners of medicine .

The uproar from the medical community in the early years following this judgment died soon after to be replaced with reluctant admiration of this noble piece of legislation. As such, it is the best thing to have happened to the medical profession. The regulatory bodies like Medical council of India entrusted with the responsibility of checking malpractice and unethical practices by doctors having failed miserably, consumer law is the only thing that comes to the aid of the poor consumer victim sinking in the muddle of defective medical services. Unbridled freedom of practice to any profession is a dangerous thing. It benefits none. Consumer law judgments indict the incompetent and offer solace to the unfortunate victim of medical negligence through monetary compensation. Consumer law hovering behind, the profession and practice are motivated to achieve and maintain higher standards of care and competency on pain of monetary loss. Its nuisance value however remains untouched. There is always a recalcitrant minority in the society which would resort to litigation without any reason and the medical profession must learn to live with this irritant in the years to come.

A law is a dynamic entity; the body and substance of the Law remain unchanged until amended; but the implementation of the law and the judicial outlook of the law do change over

a period of years. Misuse of the provisions of the Act is a rampant phenomenon in the society. Consumer law has not escaped these mutations.

In the case of Consumer law, constant exposure to medical affairs has enabled the judiciary to gain knowledge of issues in the practice of medicine; the complexities and intricacies of medical practice have been understood better with the help of knowledge obtained from medical experts and this is reflected in the judgments. People also gain knowledge and become adept in taking advantage of the loop holes of the law. An analysis of the judgments emanating from the various consumer forums reveals that all the four stake holders of consumer law i.e. the people, the judiciary, the Government and doctors have been affected by the law; the law in turn is manipulated and influenced by all the four.

JUDICIAL TRENDS IN CONSUMER LAW CASES:

On the enactment of the consumer law, the Judiciary which is a lay body came to be entrusted with adjudicating continually on medical issues, the complexity of which varies from case to case. Quite naturally, in the early years of consumer law, what with judges being ordinary mortals and subject to all the emotions influencing humans, the misery of the complainant patient [whether iatrogenic or otherwise] was deduced as a sign of deficiency. Most of the judgments tended to steer towards mitigating the hardship caused to the patient rather than trying to detect the root cause of the problem.

Today, this kind of misguided sympathy towards the suffering patient is conspicuous by its absence and unless there is a clear cut nexus between medical deficiency and patient's suffering, "damages" are not generally awarded.

Another interesting development is that "damages" decreed in the early years of consumer law tended to be on the low side; less than 5 lakh rupees in most cases but in recent times, it is anywhere between 10 to 15 lakhs in the majority of cases. In some famous cases like Kunal saha and Prasanth Dhananka, crores of rupees have been decreed as "damages." Such heavy damages may precipitate financial ruin of the medical establishments. So, doctors have to be really careful in their practice.

A few recent judgments emanating from the Honourable Supreme Court of India have done much to lessen the rigour of the consumer law on doctors. Notable among them are:

1. In the Jacob Mathew and Suresh Gupta cases, Supreme Court has clearly spelt out that before proceeding with a criminal case foisted on doctors, opinion should be obtained from experts preferably Government doctors, of the concerned specialty to ascertain whether prima facie a case of criminal negligence can be made out from the facts of the case. Instructions have been issued to Police establishments that doctors need not be

arrested as a matter of routine when criminal cases are filed against them unless there is a genuine apprehension that the concerned doctor may evade arrest or otherwise impede the process of law.

2. Another important judgment in the case of Dr. Praba Manchanda & Anr v. Samira Kohli considerably lessens the burden on doctors. Through this judgment Supreme Court has substituted “real consent” in the place of “informed consent”. Real consent is a somewhat simpler proposition compared to informed consent as far as the quantum of information to be given to the patient waiting for surgery.

The above judgments enable an impartial observer to conclude that “Law has understood medicine better than medicine has understood the Law.”

PEOPLE AS “CONSUMERS” OF “MEDICAL SERVICES”:

In addition to vexatious litigation, taking law into their hands, unleashing violence on doctors and property of medical establishments, rushing to the police stations to file criminal complaints on doctors are some of the unfortunate traits that people seem to have acquired in recent times. Many such incidences have happened in the past inducing doctors and medical students to go on strike demanding protection from assault on person and property. Such recurrent incidences have brought about an ordinance on hospital protection by the Government. Assault on doctors and healthcare establishments both Government and private is now a cognisable and non-bailable offence with imprisonment up to 3 years with or without fine up to Rs.50000. It is to be hoped that the punishment prescribed by the above ordinance would prove to be sufficiently deterrent as to bring about cessation of aggression on doctors and hospitals.

In many instances emotional resentment rather than premeditated aggression has been the cause of such incidents. Delay in providing treatment, inadequate care and unexpected death of the patient are some of the factors which have provoked violence. People have high degree of expectations from doctors and modern medicine; when their hopes are shattered due to carelessness and negligence (real or imagined), their emotional rage and fury turns towards healthcare persons and property. This development is wholly unfortunate and no effective solution seems to be in sight.

The only comforting thought in this grim scenario is that a criminal complaint under Sec 304-A of the Indian Penal Code is a bailable offence; therefore a doctor getting arrested has nothing to fear. He can claim and obtain bail as a matter of right and then he can pursue his case.

PHYSICIANS' ATTITUDE TOWARDS CONSUMER LAW:

Deep rooted antipathy, resigned acceptance and reluctant admiration in the order named sums up the attitude of doctors towards consumer law. When consumer law was enacted and “damages” were decreed against doctors, they resented it. With the Supreme Court judgment in IMA v. V.P.Shantha, they accepted it.

Today most of the physicians would grudgingly admit that consumer law is not the demon it was made out to be. Doctors are also consumers of non-medical services and they stand to benefit as much from consumer law as any patient with a grievance against medical establishment. The provisions of the Consumer Protection Act are neither anti-doctor nor pro-patient. It only provides for an effective forum/remedy against defective goods and services with minimum of procedural delays or expense. As such, it should be welcomed by all including doctors and patients.

All of us must remember that consumer law does not create any new liabilities to the medical profession; it is in effect a side arm of the regular civil courts adjudicating on issues raised by special class of patients called consumers.

It is also pertinent to point out that there are many features favourable to doctors in the consumer law:

- Consumer law is not a penal law; it is a civil law. Even if loss of life ensues due to medical negligence, it is not viewed as crime of murder. No imprisonment to the doctor but only financial compensation to the sufferer is decreed.
- The burden of proving medical negligence is on the complainant patient except in cases of res ipsa loquitor
- Services of a lawyer are optional; written affidavits would suffice in most cases.

As prudent members of a noble profession we have nothing to fear from consumer law. Law demands only care but not cure. It is a watchdog but not a bloodhound out to persecute doctors.

GOVERNMENT'S ATTITUDE TOWARDS CONSUMER LAW:

Government's approach to consumer affairs has been persistently lukewarm from the beginning. After the enactment of the consumer law, precious little was done to implement it for nearly three years; it needed public interest litigation in the Supreme Court to nudge it into action. Even today many consumer forums are working in dilapidated buildings without much of clerical help or infrastructure. Many posts in the consumer forums are lying vacant.

The entry of lawyers in consumer forums is causing frequent adjournments leading to pile up of cases. According to the letter of law, a consumer case must be adjudicated within 90 days in the district forum but in today's environment it takes anything up to 2 or more years to get a decision in a district forum. If you go for appeal, it may take another 2 years for the state commission and yet another 2 years for the national commission. All these delays defeat the very purpose of the consumer law which was enacted for the "aam aadmi".

Most of the non-judicial members are still taken from the lawyer's community. Every other line of study is considered suitable for appointment as non-judicial member except medicine. This is highly lamentable considering that at least 15% of the cases in any consumer forum are about medical negligence.

SUMMING UP:

From the foregoing one can easily conclude that consumer litigation is less of a threat to doctors than ever before. The incidence of vexatious litigation is also going down. The fact that medicine is not an exact science but only a science of probabilities seems to have reached home. However, this should not lead us to complacency. Rather we should strengthen our resolve to follow standard practices. With professional indemnity insurance and prudence, it should be possible for doctors to fight and win over the evil of consumer litigation.

It is also pertinent at this moment to remind ourselves about the "Physician's Prayer" by Hutchison which tells us what we should not do in our practice.

From inability to let well alone,

From too much zeal for what is new and contempt for what is old,

From putting science before art, knowledge before wisdom, cleverness before common sense,

From treating patients as cases,

From making the cure of disease more grievous than its endurance

Good Lord; deliver us.

Given below is a list of simple easy to follow instructions to escape from consumer litigation:

- Stick to your line of speciality; do not step beyond your capabilities.
- Take expert help/second opinion whenever in doubt.
- Talk to the patient/relatives freely and without reserve; gain their rapport.
- Take consent in the presence of witnesses. Consent should be patient and procedure specific. Consent for laparotomy does not mean consent for blood transfusion. Do not do anything beyond that which was consented to.

- Take out professional indemnity insurance from day 1 of your practice.
- Document every little aspect of treatment; remember, according to Courts, “What is not written was not done.” Date, time and signature should always be there in your documents. Document does not mean a small size paper in which notes are scribbled. It should be real-time.

Doctor-patient relationship is one founded on trust and good will. It is very often soured only by our attitude and approach. Simple strategies outlined above can go a long way in eliminating consumer litigation. All of us must strive together to achieve this utopian ideal.

Concluded